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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,712	01/28/2002	Max C. Perena	PERE100	2079

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EXAMINER

LUBY, MATTHEW D

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/056,712

Applicant(s)

PERENA, MAX C.

Examiner

Matt Luby

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 02 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mah (5,333,333).

3. Mah discloses an ambulatory device comprising a U-shaped frame (the base frame shown in Figure 1 to which the wheels are attached) having a closed rear end (the bottom part of the "U" is "closed" by the bar between the rear wheels), two sides (Figure 1), and an open front end (Figure 1), two small front wheels (Figure 1), two large rear wheels (Figure 1), a seat (38) attached to the rear of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), and a support system (34) attached to the rear end of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), which support system comprises a support frame having a vertical section and a horizontal section (shown in Figure 1), a body halter having straps (Figures 19, 23 and 25-28 show various types of body halters with straps - i.e., the vertically disposed lines connected to the body halter 170, Figure 19 or 214, Figures 25-28), which straps are connected by connectors to a swivel bar (44 or 216), which swivel bar is connected to a support bar (146 - Figure 7), and which support bar

Art Unit: 3611

is connected via control connectors (120, 144) through a pulley system (138, 140, figures 17 and 18) to a winch (90) on the vertical section of the support frame (see Figure 6), wherein the two sides have hand rails (which are attached through the vertical supports indicated by reference numeral 32 in Figure 1 and on the seat, as shown), wherein the vertical section of the support frame contains a height-adjusting mechanism (shown in Figure 12 as fastener bolts 76 and holes 78 and described in column 4, line 57 to column 5, line 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Jones (4,973,044).

6. Mah discloses all of Applicant's claimed invention except for an electronic scale. Jones discloses an electronic scale (column 3, line 68 to column 4, line 4) in order to indicate the amount or percentage of the patient's weight the patient is to bear during a physical therapy session (column 4, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an electronic scale on the Mah device as taught by Jones in order to indicate the amount or percentage of the patient's weight the patient is to bear during a physical therapy session.

Art Unit: 3611

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Colpron (5,165,123).

8. Mah discloses all of Applicant's claimed invention except for hand grasps on the rear wheels. Colpron discloses an ambulatory device including large rear wheels with hand grasps (best seen in Figure 2) in order to permit the rider to self-propel the device (an inherent and well-known advantage of hand-grasps on self-propelled wheelchair devices). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide hand grasps on the rear wheels of Mah as taught by Colpron in order to permit the rider to self-propel the device.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Santmann (5,224,721).

10. Mah discloses all of the claimed invention except that the seat is foldable. Santmann discloses an ambulatory device including a foldable seat (88) in order to provide a means for the user to rest that may be raised as desired (column 1, lines 12-18 and 21-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a foldable seat on the Mah device as taught by Santmann in order to provide a means for the user to rest that may be raised as desired.

Response to Arguments

11. Applicant's arguments filed 7/2/03 have been fully considered but they are not persuasive.

Art Unit: 3611

It is noted firstly that the 112, 2nd paragraph rejection regarding the term "closed rear end" has been withdrawn. This term will henceforth be interpreted and read broadly (as Applicant urges in the paragraph bridging pages 15 and 16) as a U-shaped frame with a closed end (i.e., a box shaped frame). Furthermore, Examiner strongly disagrees that he has expressed an opinion of validity on any of the issued patents listed in the first sentence of page 17. All of Applicant's claim limitations are examined with reference to the current application and not with reference to formerly issued U.S. Patents. "Similar terminology" (using Applicant's terminology from page 17, line 11) that was not rejected under 112, 2nd paragraph in prior issued U.S. Patents does not necessarily force a U.S. Patent Examiner to bypass all examination requirements and blindly forego analysis under 35 U.S.C. 112, 2nd paragraph.

Applicant argues on page 18 that the Mah reference does not show straps. Inasmuch as Applicant has used the definition strap to mean "a narrow, usually flat strip or thong of a flexible material and especially leather...", the Mah reference most definitely does show straps in at least Figures 19, 23 and 25-28. The 102 rejection above is believed to clearly point this out.

Applicant next argues on page 19 that the shackle, 146, of Figure 7 of Mah cannot be used to meet the support bar limitation. This argument is completely unpersuasive. Applicant has said that the definition of a "bar" includes "a...rigid piece (as of wood or metal) longer than it is wide that is used as a handle or support". The 'shackle', 146, in Figure 7 meets this to the extent that Applicant has broadly recited "a

Art Unit: 3611

support bar". Applicant is invited to define the limitations in the claims as specifically as he wishes them to be examined.

Regarding the remarks with reference to claim 3 on page 19, there was a typographical error in the last Office Action and claim 3 was not intended to be rejected under Mah alone (as is abundantly evident from the 103 rejection of claim 3 in view of Colpron). The Colpron reference was used to teach a hand grasp on a large rear wheel.

Regarding Applicant's argument on page 19 that the Mah reference only shows a seat or handrails, Applicant is directed to Figure 1, which shows both.

In response to applicant's argument that there is no suggestion to combine the references (page 22), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine can be found in the supporting references themselves as is spelled out for Applicant in the above 103 rejection motivational statements.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3611

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


LESLEY D. MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Matt Luby
Examiner
Art Unit 3611

Application/Control Number: 10/056,712

Art Unit: 3611

M.L.

August 29, 2003

Page 8

Matt